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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71332; File No. SR-NSX-2014-01)

January 16, 2014

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fee and Rebate Schedule With Respect to the Order Delivery Mode of Interaction With the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on January 9, 2014, National Stock Exchange, Inc. (“NSX[®]” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1 to: (i) eliminate separate Pricing Options A and B of Section II. of the Fee Schedule and adopt a single pricing structure for all Exchange Equity Trading Permit (“ETP”) Holders using the Order Delivery mode of interaction³ with the Exchange (an “Order Delivery User”);⁴ (ii) eliminate the Market Data Revenue rebate (“MDR”) and Order Delivery Notification Fee under Pricing Option A; (iii) within the proposed new

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 11.13 (Proprietary and Agency Orders; Modes of Order Interaction), paragraph (b)(2).

⁴ A “User” is defined in Exchange Rule 1.5 as “...any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9 (Access).

unitary fee structure, establish a rebate based on average daily volume (“ADV”) of executed shares adding liquidity using Order Delivery Mode, with Order Delivery Users receiving a transaction rebate based on their ADV adding liquidity solely using Order Delivery Mode, or combined with ADV totals including trading volume by that same Order Delivery User through the Auto Ex mode of interaction with the Exchange;⁵ and, (iv) amend Section IV. of the Fee Schedule (Regulatory Fee) to eliminate Quotation Update Fees applicable to Order Delivery Users only.

The text of the proposed rule change is available on the Exchange’s website at www.nsx.com, at the Exchange’s principal office, and at the Commission’s public reference room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing amendments to Sections II. and IV. of the Fee Schedule with respect to certain fees and rebates applicable to Order Delivery Users. The changes are intended to further enhance the Exchange’s competitive position by offering pricing that will incentivize

⁵ See Exchange Rule 11.13(b)(1).

current Order Delivery Users to increase their trading volumes while at the same time providing an economically attractive price structure designed to encourage additional electronic communications networks (“ECNs”) to become Order Delivery Users. In order to achieve these goals, the Exchange is proposing to eliminate the separate Pricing Options A and B currently contained in Section II. of the Fee Schedule and adopt a single fee and rebate structure that will apply to all Order Delivery Users, for executions in both securities priced at \$1.00 and above and securities priced below \$1.00.

Elimination of Order Delivery Notification and Quotation Update Fees

Under the proposed unitary structure, the Exchange will eliminate the Order Delivery Notification Fee of \$0.35 under current Pricing Option A for each Order Delivery Notification, up to 1.5 million Order Delivery Notifications per month, delivered by the Exchange's Trading System (the "System")⁶ to an Order Delivery User for potential execution against a posted displayed or undisplayed order in any security priced at \$1.00 and above. As proposed, there will be no Order Delivery Notification fee assessed for any Order Delivery Notification transmitted by the Exchange to an Order Delivery User, without regard to the price of the security or any minimum number of Order Delivery Notifications per month.⁷ The Exchange also proposes to eliminate the Quotation Update Fee for Order Delivery Users under Section IV. of the Fee Schedule and assess no fee for quotation updates by Order Delivery Users, regardless of the price of the security or the number of quotation updates in a calendar month⁸

New Rebate Structure for Order Delivery Mode

In addition to the proposed elimination of the Order Delivery Notification Fee and Quotation Update Fee applicable in Order Delivery Mode, the Exchange is proposing to adopt a new rebate schedule for adding liquidity solely through Order Delivery Mode, or through use of

⁶ See Exchange Rule 1.5, which defines the "System" as "... the electronic securities communications and trading facility designated by the Board through which orders of Users are consolidated for ranking and execution."

⁷ Currently, an Order Delivery Notification Fee is not assessed for Order Delivery Notifications delivered by the System to an Order Delivery User for potential execution against a posted displayed or non-displayed order in any security priced below \$1.00.

⁸ Prior to these changes, the Exchange charged Order Delivery Users a Quotation Update Fee of \$0.000467 per quotation update in securities priced at \$1.00 and above, applied to the first 150 million quotation updates; a new Order Delivery User would pay a Quotation Update Fee of \$0.00667 [sic] for quotation updates in securities priced at \$1.00 and above, applied to the first 150 million quotation updates, during the first three months of using Order Delivery Mode.

Order Delivery mode in combination with Auto Ex Mode by the same Order Delivery User.⁹ Specifically, the Exchange proposes to provide for rebates within certain ADV tiers for executions adding liquidity in securities priced at \$1.00 and above by Order Delivery Users occurring solely through Order Delivery Mode. For Order Delivery Users that interact with the Exchange in Auto Ex Mode as well as Order Delivery Mode, the Exchange is proposing to adopt a separate rebate schedule with ADV tiers for executions adding liquidity in securities priced at \$1.00 and above occurring both through Order Delivery Mode and Auto Ex Mode by the same Order Delivery User. If an Order Delivery User meets the ADV requirements in both modes of interaction, the Exchange will pay an enhanced rebate for the Order Delivery component. Under this proposed rebate plan, the Exchange will eliminate the MDR under current Pricing Option A. No rebates will be paid for executions in securities priced below \$1.00. The proposed rebate structure will apply across all Tapes.¹⁰

For executions occurring solely through Order Delivery Mode, the Exchange proposes to adopt a three-tiered, volume based-rebate plan whereby an Order Delivery User will receive a rebate of \$0.0005 per executed share for ADV adding liquidity in an amount equal to or exceeding 15 million shares per calendar month; an Order Delivery User will receive a rebate of \$0.0013 per executed share for ADV adding liquidity in an amount equal to or exceeding 20 million shares per calendar month; and, for ADV adding liquidity in an amount equal to or exceeding 25 million shares per calendar month, an Order Delivery User will receive a rebate of

⁹ Currently, Order Delivery Users and their affiliated ETP Holders interact with the Exchange using both Order Delivery Mode and Auto Ex. Mode, using a separate market participant identifier or “MPID” for each mode of interaction. Pursuant to Exchange Rule 16.3, upon request of an ETP Holder, its activity may be aggregated with the activity of its affiliated ETP Holders for purposes of applying the fees and rebates referenced in the Fee Schedule.

¹⁰ For January 2014, ADV for purposes of these proposed amendments will be calculated based on the number of trading days in the month during which the changes are in effect.

\$0.0017. The rebates at each ADV tier level will apply to the total executed volume by that Order Delivery User during the calendar month.¹¹

For Order Delivery Users that also interact with the Exchange through Auto Ex Mode, the Exchange is proposing a two-tiered, volume based rebate structure that will provide a rebate to Order Delivery Users that meet or exceed certain ADV thresholds of added liquidity occurring through both forms of interaction with the System. The Exchange proposes to pay a rebate of \$0.0005 per executed share for ADV adding liquidity in Order Delivery Mode in an amount equal to or greater than 300,000 shares up to 749,999 shares, plus ADV of 2 million shares or greater of added liquidity through Auto Ex Mode by the same Order Delivery User; the Exchange proposes to pay a rebate of \$0.0010 per executed share for ADV adding liquidity in Order Delivery Mode in an amount equal to or exceeding 750,000 shares, plus ADV of 3 million shares or greater of added liquidity through Auto Ex Mode by the same Order Delivery User.

The Exchange notes that these rebates will apply only to the ADV of added liquidity provided through Order Delivery Mode and will not affect the rebates available to the Order Delivery User under Section I. of the Fee Schedule (Automatic Execution Mode). In every case, the Order Delivery User will receive the applicable rebate provided under Section I. for transactions adding liquidity in Auto Ex Mode but will only be eligible for the tiered rebates for liquidity added through Order Delivery Mode if the ADV levels are satisfied for the applicable tier. The rebates at each ADV tier level will apply to the total executed volume by that Order Delivery User in both modes of interaction during the calendar month.

¹¹ Current Order Delivery User ADV adding liquidity meets or exceeds the Tier 1 amount of ADV equal to or greater than 15 million shares for purposes of the rebate for Order Delivery Mode.

The Exchange believes that the proposed transaction rebates will incentivize current Order Deliver Users to increase their activity in Order Delivery Mode. The Exchange's proposal is also designed to offer incentives for new entrants into Order Delivery Mode by offering transaction rebates that for activity through both forms of interaction with the System, with smaller total ADV adding liquidity in Order Delivery Mode but requiring ADV adding liquidity in Auto Ex Mode of 2 million or 3 million shares.

With respect to all of the proposed changes to the Fee Schedule for Order Delivery Mode, the Exchange is seeking to adopt a fee and rebate structure that will both incentivize current Order Delivery Users to increase their participation in Order Delivery Mode by eliminating the fees and providing for transaction rebates for adding liquidity in ADV amounts equal to or greater than 15 million shares, with the highest rebate paid for ADV of added liquidity in an amount equal to or greater than 25 million shares. The Exchange submits that the proposed transaction rebates for adding liquidity in ADV amounts combining executions in Order Delivery Mode with Auto Ex Mode will operate to incentivize smaller ECNs to increase their interaction with the Exchange, thereby providing additional liquidity and additional competition for price discovery.

Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will provide a copy of the rule filing on the Exchange's web site, www.nsx.com.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹² in general and, in particular, Section 6(b)(4) of the Act,¹³ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange not permit unfair discrimination customers, issuers, brokers, or dealers, and be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange submits that, as set forth below, its proposal to eliminate separate Pricing Options A and B under the current Fee Schedule and adopt a unitary fee and rebate structure for Order Delivery Users meets the requirement of Section 6(b)(4) of the Act in that it provides for an equitable allocation of reasonable, dues, fees and other charges among Order Delivery Users and other persons using the facilities of the Exchange. The Exchange is seeking to provide for a structure that fulfills the dual goals of incentivizing current Order Delivery Users to increase their activity on the Exchange while at the same time promoting new entrants to become Order Delivery Users. All ETP Holders that are approved as Order Delivery Users will be subject to the same fee and rebate structure, thereby equitably allocating the fees and rebates among all Order Delivery Users. The rebates will be based on specific volume-based ADV tiers, with higher rebates paid for increased volume.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78(f)(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

The Exchange believes that its proposal to eliminate the separate pricing options is consistent with Section 6(b)(5) of the Act in that, by seeking to increase activity in Order Delivery Mode by both current Order Delivery Users and prospective new entrants, the proposal will promote just and equitable principles of trade and operate to remove impediments to and perfect the mechanism of a free and open market and national market system.

Addressing the individual elements of the proposed changes to the Fee Schedule, the Exchange will eliminate the Order Delivery Notification Fee of \$0.35 under current Section II., Pricing Option A, for each Order Delivery Notification, up to 1.5 million Order Delivery Notifications per month, delivered by the System to an Order Delivery User for potential execution against a posted displayed or undisplayed order in any security priced at \$1.00 and above; the Exchange also proposes to eliminate the Quotation Update Fee for Order Delivery Users under Section IV of the Fee Schedule and assess no fee for quotation updates by Order Delivery Users, regardless of the price of the security or the number of quotation updates in a calendar month.

As proposed, Order Delivery Users will not pay any fees for Order Delivery Notifications or Quotation Updates in any security traded on the Exchange. The Exchange believes that the elimination of such fees is consistent with Section 6(b)(4) of the Act in that it is reasonable as a component of the broader changes to the Fee Schedule proposed in this rule amendment, in which the fees and rebates applicable to Order Delivery Mode are being changed to simplify the structure and incentivize increased participation in Order Delivery Mode. The Exchange further believes that elimination of the Order Delivery Notification and Quotation Update Fees is consistent with the requirement of Section 6(b)(4) of the Act in that it will be equitably allocated among all Order Delivery Users, without regard to the price of the security or whether the Order

Delivery User has met a numerical threshold to cap such fees, as required under the operative Fee Schedule prior to these changes. Given that these fees apply only to Exchange ETP Holders approved by the Exchange as Order Delivery Users, it is consistent with Section (6)(b)(4) to consider the equitable application of the proposed change within the context of this defined type of market participant.¹⁵

Additionally, the Exchange submits that the elimination of the Order Delivery Notification and Quotation Update Fees is consistent with Section 6(b)(5) of the Act in that it is not unfairly discriminatory. These fees are specific to the Exchange's Order Delivery Mode and applicable to all Order Delivery Users; their elimination will affect only Order Delivery Users, but will apply equally to both current Order Delivery Users and to new entrants. The Exchange also notes that it previously filed with the Commission, for immediate effectiveness, changes to the Fee Schedule as of November 1, 2013 that eliminated the Order Delivery Notification Fee and Quotation Update Fee in securities priced under \$1.00.¹⁶ Under the current proposal, the elimination of these fees will now be extended to all securities traded on the Exchange.

The Exchange also proposes to eliminate the 50% MDR currently provided under Pricing Option A. This amendment is consistent with Section 6(b)(4) of the Act in that it is reasonable

¹⁵ The Exchange notes that in prior rule filings to amend the Fee Schedule, it stated that the Order Delivery Notification fee is intended to recover Order Delivery Mode's development and ongoing operational costs (see Exchange Act Release No. 68391 (December 10, 2012); 77 FR 74536 (December 14, 2012); SR-NSX-2012-25); and the revenue raised through the Quotation Update Fee is designated to support the Exchange's regulatory oversight (see Exchange Act Release No. 68215 (November 13, 2012); 77 FR 69522 (November 19, 2012); SR-NSX-2012-20). The Exchange represents that the elimination of these fees will not impact the Exchange's system development and operations or the Exchange's regulatory program as all of these functions will be funded by the Exchange through the general revenues of the Exchange. The Exchange intends to continue to allocate to the regulatory program the same amount of money that would be generated through the Quotation Update Fee.

¹⁶ See Exchange Act Release No. 34-70890 (November 15, 2013); 78 FR 69900 (November 21, 2013); SR-NSX-2013-21.

to eliminate this rebate for Order Delivery Mode in view of the removal of the Order Delivery Notification Fee and Quotation Update Fee, which will operate to reduce the costs for use of Order Delivery Mode. The Exchange believes that it is reasonable to provide for a volume-based rebate plan for Order Delivery Mode and eliminate the MDR. The Exchange also believes that this proposal is also consistent with Section 6(b)(4) of the Act in that it is equitably allocated among all Order Delivery Users. Further, the proposed change is consistent with Section 6(b)(5) of the Act in that it is not unfairly discriminatory among market participants in that every Order Delivery User will be subject to the same rebate plan. The Exchange notes that Order Delivery Users who also interact with the System through Auto Ex Mode will be continue to be eligible for the MDR provided in Section I. of the Fee Schedule; this will include Order Delivery Users that also interact with the System using Auto Ex Mode and meet the ADV thresholds for the MDR under Section I. of the Fee Schedule.

The Exchange further submits that the elements of its proposal that provide for a tiered rebate structure for ADV of added liquidity through Order Delivery Mode, either exclusively or through combined ADV totals of added liquidity by the same Order Delivery User through Order Delivery Mode and Auto Ex Mode, are consistent with Section 6(b)(4) of the Act in that they are reasonable and equitably allocated among market participants and other persons using the facilities of the Exchange. The Exchange believes that the proposed changes are reasonable, both individually and within the broader context of the amendments to the Fee Schedule for Order Delivery. The Exchange's proposal, as discussed above, includes the elimination of Order Delivery Notification Fees and Quotation Update Fees. Together with the proposal to remove these fees, the tiered, ADV-based rebate plan is designed to incentivize current Order Delivery Users to increase their activity on the Exchange, and to encourage new entrants to Order

Delivery Mode. The Exchange's goal is to increase the number of Order Delivery Users, thereby increasing liquidity on the Exchange and, optimally, providing better execution opportunities for customers.

The Exchange believes that, given its proposal to remove the fees, the amendment providing for a lower rebate than the \$0.0030 per share rebate for added liquidity under current Pricing Option A is reasonable and consistent with Section 6(b)(4) of the Act. It is also reasonable, and consistent with the approach of Section I. of the Fee Schedule, to establish volume tiers for adding liquidity that will provide additional economic incentives for using Order Delivery Mode. Finally, the Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act in that they are equitably allocated among all Order Delivery Users who satisfy the ADV tiers to be eligible for the rebates to add liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change seeks to adopt a fee and rebate structure for Order Delivery Mode that is intended to enhance competition by incentivizing current Order Delivery Users to increase their participation and attract additional ECNs to become Order Delivery Users. The proposed changes will, the Exchange submits, operate to enhance rather than burden competition by aspiring to increase liquidity on the Exchange through reasonable and equitably allocated economic incentives.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and subparagraph (f)(2) of Rule 19b-4.¹⁸ At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2014-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSX-2014-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4.

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NSX-2014-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill
Deputy Secretary

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¹⁹ 17 CFR 200.30-3(a)(12).